

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 Oscar L. Garcia, et al.,

4 Plaintiffs

5 v.

6 Equifax Information Services LLC,

7 Defendant

Case No.: 2:17-cv-03123-JAD-VCF

**Order Granting in Part Motion to Dismiss
and to Strike**

[ECF No. 20]

8 In their second amended complaint, plaintiffs Oscar Garcia, Donald Sutton, and Clarence
9 Williams allege that they notified defendant Equifax Information Services, LLC of believed
10 inaccuracies in their credit reports and that Equifax never responded. They contend that Equifax
11 violated a provision of the Fair Credit Reporting Act (FCRA) that requires credit reporting
12 agencies to notify consumers who have reported inaccuracies that a reinvestigation has been
13 completed. The plaintiffs also raise allegations to represent a purported nationwide class.
14 Equifax moves to dismiss and to strike the class allegations, arguing that the plaintiffs have
15 failed to allege that their credit files contained an actual inaccuracy and that individual factual
16 inquiries predominate these claims, making them inappropriate for class adjudication. I grant
17 Equifax's motion to dismiss because the plaintiffs failed to allege that there were actual
18 inaccuracies on their reports, a prima facie element of their case. And because I grant leave to
19 amend, I deny Equifax's motion to strike the class allegations without prejudice to its ability to
20 re-urge that request in response to the amended complaint.

21 **Analysis**

22 Under FCRA, a credit reporting agency (CRA) must "conduct a reasonable
23 reinvestigation" upon receiving a dispute notice from a consumer concerning the accuracy of

1 information in a consumer report.¹ Upon completion of this reinvestigation, a CRA must either
2 notify the consumer in writing that it determined the dispute is frivolous under § 1681i(a)(3)(B)
3 or of the results of the reinvestigation under § 1681i(a)(6). The plaintiffs do not challenge
4 Equifax’s reinvestigation procedures; their only claim is that Equifax violated these so-called
5 “prompt-notice” requirements.

6 To state a claim under § 1681i, the consumer must make a prima facie showing of
7 inaccurate reporting.² The plaintiffs argue, however, that they are not required to allege that the
8 reporting they believed to be inaccurate was actually inaccurate. They argue that a claim under
9 the prompt-notice requirements does not require the same showing of inaccuracy that is required
10 for all other § 1681i claims and that holding otherwise would render the prompt-notice
11 provisions superfluous.

12 But the Ninth Circuit’s precedent requires plaintiffs to plead and prove an inaccuracy on
13 their credit report to state any § 1681i claim. In *Carvalho v. Equifax Information System, LLC*,
14 the Ninth Circuit considered a district court order granting summary judgment in the defendant’s
15 favor on claims brought under two provisions of California’s state-law analog to the FCRA: one
16 that requires CRAs to conduct a reinvestigation after a consumer notifies it of a believed
17 inaccuracy, and another requiring notice of the results of the reinvestigation be sent to the
18 consumer.³ After determining that the California law was “substantially based on the [FCRA],”
19 the court turned to the question of whether the plaintiff was required to show inaccuracies for her
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22 ¹ 15 U.S.C. § 1681i(a)(1)(A).

23 ² *Carvalho v. Equifax Info. Sys., LLC*, 629 F.3d 876, 890 (9th Cir. 2010); *Dennis v. BEH-I, LLC*,
520 F.3d 1066, 1069 (9th Cir. 2008).

³ *Carvalho*, 629 F.3d at 889.

1 claim to survive.⁴ The court found that, “although the FCRA’s reinvestigation provision . . .
2 does not on its face require that an actual inaccuracy exist for a plaintiff to state a claim, many
3 courts, including [the Ninth Circuit], have imposed such a requirement.”⁵ This requirement
4 “comports with the purpose of the FCRA, which is to ‘protect consumers from the transmission
5 of inaccurate information about them.’”⁶ The Ninth Circuit held that, for a plaintiff’s § 1681i
6 claim to survive, he or she must make a prima facie showing of inaccuracy.⁷ The court applied
7 this rule without distinguishing between the plaintiff’s claims that the reinvestigation procedures
8 were inadequate and her claim that she received no notice after the reinvestigation’s conclusion.

9 The plaintiffs here attempt to distinguish *Carvalho*, but their distinction cherry picks
10 from the district court order that *Carvalho* affirms. That order questioned the inaccuracy
11 requirement but ultimately applied it to the prompt-notice provisions because “[t]hose provisions
12 are tied to the underlying reinvestigation requirements, and a plaintiff who cannot state a claim
13 for inadequate reinvestigation procedures logically cannot state a claim for failure to provide
14 notice of alleged defects in those procedures.”⁸ The plaintiffs cite no authority that has applied
15 *Carvalho*’s requirement to some claims under § 1681i and not to others. The cases they cite do
16 not support their proposed rule because the presence of inaccuracies was not disputed in those

20 ⁴ *Id.*

21 ⁵ *Id.* at 890.

22 ⁶ *Id.*

23 ⁷ *Id.*

⁸ *Carvalho v. Equifax Info. Sys., LLC*, 588 F. Supp. 2d 1089, 1099–1100 (N. D. Cal. 2008), *aff’d*,
629 F. 3d 876 (9th Cir. 2010).

1 cases.⁹ Plus, courts in this district have found that an actual inaccuracy is an element of all
2 claims under § 1681i.¹⁰

3 The plaintiffs are therefore required to allege not only that they believed Equifax reported
4 an inaccuracy in their credit files, but also that the reporting actually was inaccurate. They do
5 not raise these allegations in their second amended complaint, so I grant Equifax's motion to
6 dismiss without prejudice. The plaintiffs have 10 days to file an amended complaint to allege
7 facts to support this element of their claim under § 1681i if they can truthfully do so. Because I
8 am granting leave to amend and motions to strike are generally disfavored in this context,¹¹ I
9 deny Equifax's motion to strike the plaintiffs' class allegations without prejudice to Equifax re-
10 urging it after the plaintiffs file their amended complaint.

17 ⁹ See, e.g., *Hiep Le v. Bank of Am., N.A.*, 2018 WL 1383808 (D. Nev. Mar. 19, 2018) (no
18 consideration of whether inaccuracy was required because the defendant did not dispute that an
19 inaccuracy was reported); *Adan v. Insight Investigation, Inc.*, 2018 WL 467897 (S.D. Cal. Jan.
20 18, 2018) (holding that the plaintiff had standing in a case where the parties did not dispute that
21 an inaccuracy appeared on the plaintiff's credit file); *Boydston v. U.S. Bank Nat'l Ass'n ND*,
2013 WL 5524693 (D. Or. June 6, 2013) (considering only what qualifies as an inaccuracy to
satisfy *Carvalho*'s requirement and not whether the requirement applied); *Ricketson v. Experian*
Info. Sols., Inc., 266 F. Supp. 3d 1083 (W. D. Mich. 2017) (denying summary judgment because
there was a factual dispute about whether there was an inaccuracy and noting that the Ninth
Circuit has held that § 1681i claims fail without a showing of inaccuracy).

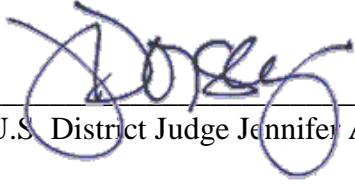
22 ¹⁰ *Florence v. Cenlar Fed. Savings & Loan*, 2018 WL 1145804 at * 4 (D. Nev. March 1, 2018);
23 *Hannon v. Northeast Credit & Collections*, 2018 WL 577216 at *1 (D. Nev. Jan. 26, 2018).

¹¹ See *Thorpe v. Abbot Lob., Inc.*, 534 F. Supp. 2d 1120, 1125 (N. D. Cal. 2008); *Kazemi v.*
Payless Shoesource, Inc., 2010 WL 963225 at *2 (N. D. Cal. March 16, 2010).

1 **Conclusion**

2 IT IS THEREFORE ORDERED that Equifax's motion to dismiss and to strike [ECF No.
3 **20] is GRANTED IN PART:** Equifax's motion to dismiss is granted, but its request to strike the
4 class allegations is denied without prejudice. The plaintiffs have until April 14, 2019, to file an
5 amended complaint.

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7 Dated: April 4, 2019

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9 U.S. District Judge Jennifer A. Dorsey